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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/711,961 09/06/96 BRANSTROM

A 003/030/SAP

HM22/0303

MCMR-JA (JOHN MORAN)
US ARMY MEDICAL RESEARCH
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FORT DETRICK
FREDERICK MD 21702-5012

EXAMINER

YUCEL, I

ART UNIT

PAPER NUMBER

1636

21

DATE MAILED:

03/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/711,961

Applicant(s)
Branstrom et al.

Examiner
Remy Yucel

Group Art Unit
1636

☒ Responsive to communication(s) filed on Jan 19, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 45-55 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 45-55 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claims 45-55 are pending in the application.

This Office action is in response to the response filed 19 January 2000.

Response to Amendment

Claims 45-55 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent 5,824,538 for the reasons made of record in the Office action mailed 19 July 1999. Applicant's intention of filing a terminal disclaimer upon notification that the instant claims are otherwise in condition for allowance is noted; however, in the absence of a terminal disclaimer, the claims stand rejected.

Claims 45-55 stand rejected under 35 U.S. C. 102(e) for the reasons made of record in the Office action mailed 19 July 1999 (see below).

The declaration filed on 19 January 2000 under 37 CFR 1.131 has been considered but is ineffective to overcome the Powell et al. reference.

The Powell et al. reference is a U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the patent is claiming the same patentable invention, see MPEP § 2306. The patent can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. Applicant is specifically directed to MPEP 2306 and the discussion of 37 CFR 1.608 (MPEP 2308.02).

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR § 1.6 (d)). The Group 1600 FAX numbers are (703) 308-4242 or (703) 305-3014. Unofficial faxes may be sent to the examiner at (703) 305-7939. NOTE: If applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Remy Yucel, Ph. D. whose telephone number is (703) 305-1998. The examiner can normally be reached on Monday through Fridays from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. George Elliott can be reached at (703) 308-4003.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


Remy Yucel, Ph. D.
March 2, 2000